

Chairman's Report for 2016

1. 2016 has been another eventful year for Hong Kong, and for the Bar. There were internal and external challenges which called for careful handling. Lessons were learned, insights were renewed, and new trails were blazed in the course of the year. In every step of the way I have been grateful for the collective wisdom of members of the Council, who have always been there for me with rapid responses delivering sobering and wise counsel.
2. Below, I shall highlight a number of aspects of the work of the Council during the past year. Further elaboration on some of the topics can be found in the reports of the individual committees.

The Law Society's Decision on "Common Entrance Examination"

3. The year began with an unexpected announcement made by the then President of the Law Society of Hong Kong, Mr Stephen Hung, on the Law Society's decision to introduce a fundamental change in the qualifying examination for those intending to qualify as solicitors. This was referred to as the Common Entrance Examination ("CEE"). This came out of the blue with no prior notice or consultation with the Bar. In the numerous radio interviews to follow, the President of HKLS reiterated that the CEE was not meant to substitute the P.C.LL. qualification, but the Law Society would not regard it a requirement to pass the P.C.LL. for a student to proceed to training. In view of the alarming contradictions and uncertainties, the Bar reacted by issuing a statement dated 8 January 2016 calling for clearer articulation of the parameters of the change, and questioning the relationship between the intended CEE with the P.C.LL. examinations. In particular, the Bar called upon the Law Society to clarify whether the P.C.LL. course is to be made otiose for those intending to qualify as solicitors once the CEE is in place. The Bar also highlighted its disagreement with the view that the Law Society should have the sole right to control admission to its profession given the potential conflict of interest.
4. The Bar Council was briefed in meeting by Edward Chan SC who has monitored the issue on behalf of the Bar over the years. In a series of interviews given by the President of HKLS to follow his announcement, it became clear that what was intended was no more than a requirement that in certain subjects already offered in the P.C.LL. course which are considered core subjects for an aspiring solicitor, the Law Society will require compulsory questions to be set and

marked by their own members to be answered, and for a required standard to be attained, before the candidate will be permitted able to enter into training contract. This was rather surprising given the label given to the new regime.

5. The issue has since been monitored through continued contact with the three universities. However, the Bar has not been able to obtain any further elucidation on the subject since the first half of 2016. As I have been given to understand, the matter has not progressed beyond the stage of the Law Society discussing with the three universities on the workings of including “compulsory questions” to be set by the Law Society, and the mechanics of marking and rating those questions, and their weighting in the the overall requirement of the certificate course. What is clear for now is that there is not expected to be scrapping of the P.C.LL. examination in the near future, in any event not until the report commissioned by the task force led by former PJ Patrick Chan on legal education is published and carefully considered for proposals to be made.
6. I would like to express my heartfelt thanks to Edward Chan SC for his tireless effort in monitoring the development and dealing with press enquiries on this issue, and for his steady hand in steering me through the deep waters.

Practice Area Committees and Continuous Professional Development

7. I consider one of my most important duties as Chairman is to ensure that Hong Kong Bar maintain a standing that is commensurate with similar professional organizations around the world, particularly in regions with a similarly advanced development in the rule of law both in terms of maintaining standards and in governance.
8. In my contact with other Bars around the world, I have not found one single jurisdiction with a state of the development of the legal profession and the rule of law compatible to that in Hong Kong, where the profession, whether fused or divided, have not implemented some form of compulsory continuous professional development for years if not decades. When other Bars found out that we have no such rules, they could hardly suppress their look of disbelief.
9. In the course of my two-year term, I was determined to push forward, one step at a time, the implementation of the idea of our own members supporting one another in our growth. Seeing that a regulated system of continuous professional development cannot be expected to be implemented without

sufficient consultation of a plan to be proposed, the Council resolved to charge the respective practice area committees with the responsibility to share knowledge in the respective areas by organizing free seminars for members of the Bar throughout the year. The Chairman of each committee is given full discretion on the frequency of such sessions, and the structure and topics to be covered, applying his or her own judgment on the demand within the Bar. Some but not all of the committees have already responded and have provided a number of seminars to packed audience. It was pleasing to see members of the committee including those with experience in the respective areas joining hands to make these seminars successful.

10. The above initiative provides insight to the way forward. It is obvious that the learning and experience shared in these sessions will not only be of interest to other members of the Bar practicing or aspiring to practise in the relevant areas, but also to solicitors who have CPD requirements to fulfil. As and when these seminars on various practice areas can be put up as regular events, CPD accreditation could be obtained, and solicitors can be expected to be interested in attending the seminars with minimal or no charge. The marketing potential for the barristers involved, and for the bar as a whole, as a body of expert advocates in various areas is obvious. After all, competitors of the Hong Kong Bar have been doing that regularly and for free as part of their aggressive marketing campaigns, not only in Hong Kong but all over our neighbouring jurisdictions with business potential.
11. For many years, there exists under the Council a number of committees on various areas of practice. These committees were set up mainly to look into issues arising in specific areas of practice that require the Bar's input as issues arise, such as in law reform consultations, and issues arising in practice and procedure. Members with practice in the specific area are roped in.
12. In recent years, the most active committee amongst them has perhaps been the Committee on Constitutional Affairs and Human Rights, as there have been a number of difficult issues arising over the electoral systems of Hong Kong, the political system of Hong Kong SAR under One Country Two Systems, and on civil liberties to do with political protests and legal challenges against administrative actions.

13. However, I see that the practice area committees ought to fulfil another very important function – that of continued professional development. To that end, with the blessing of the Council, additional committees have been formed in the last year covering new practice areas or well-trodden areas of practice where the need is seen for a practice group to be formed to lead professional development initiatives. These are

- (a) Competition Law;
- (b) Land, Trust and Probate;
- (c) International Law;
- (d) Mediation; and
- (e) Financial and Securities Law.

The Committee of Mediation is a spin-off from the previous Committee on Alternative Dispute Resolution, which has since been renamed “Committee on Arbitration”, in recognition of the fact that the two areas involve very different academic and practical interests and considerations, and barristers who practice in one of those areas do not often actively practice in both. It is intended that the Bar will continue to build on the existing committees and grow the number of practice committees to meet the needs of the profession, particular for the purpose of knowledge building and the consolidation of expertise.

14. “Professional development” is a distinctly different concept from “legal education”. The former relates to the continuous development of members’ professional skills and learning in practice to suit the changing times and the development of the legal market, whereas the latter focuses upon the Bar’s role in working with the three universities to provide the appropriate education that would meet the minimum standard required for graduates to join the Bar.

15. In the past, the issues of whether and if so what sort of continuous professional development measures should be implemented within the Bar has been mooted from time to time under the Council, but only by the issue being palmed off to the Standing Committee on Legal Education, which reported back to the Council on their views at the time. I understand the prevailing views within the committee was against continuous professional development being made a regulatory requirement, and without the committee being asked how to do any form of professional development in a more systematic way.

16. I, however, regard it as imperative that a separate committee be set up to look into the need and methodology of continuous professional development afresh. Shortly after the Bar Council was fully constituted at the beginning of 2016, members of the Council unanimously agreed to set up a distinct and separate committee to look into what sort of continuous support in professional development are needed for the Bar to continue to grow and thrive, at all times being acutely aware of the international environment to which the Hong Kong Bar is not immune, and of the rapid changes of the demands of the legal services market and the changing practice environment.
17. The Standing Committee on Professional Development was therefore set up in March 2016, headed by Victor Dawes SC. Vice Chairman of the Bar, Paul Lam SC, has been asked to head a taskforce to work with Victor to produce a consultation paper on whether to commence a regulated system of continuous professional development, albeit on a limited scale at the beginning, for us to test capacity and viability of a regulated system. We believe in order to advance the interest and maintain the high standing of the Bar, we must have the courage and motivation to make a start on what is blindingly obvious as a basic requirement of our continued existence as a respected profession, and could only advance the interest of the Bar in practical terms. The remaining question is only in how to make it work.
18. I trust that with the energy and determination of the incoming Council chaired by the next Chairman, this long-felt want for a regulated system will be satisfied one step at a time. The success of any future regime will critically depend on a positive attitude backed by a clear and widely shared vision of how important a regulated system is for the Bar, and constructive views from members at all stages of its development.

Code of Conduct and Discipline

19. The disciplinary arm of the Bar Council has always been one of the busiest of all the committees. I would refer to the report rendered by the committee on the major aspects of their work in the year, but there are a couple of points I wish to highlight.
20. It is noted that some chambers are recruiting a large number of tenants as “Door Tenants”. While there is nothing objectionable to door tenants per se, it is a concern on whether the chambers would be in a position to provide the necessary

conference facilities as and when needed in accordance with the requirement of the Code of Conduct that barristers do not have conferences in solicitors offices unless exceptions are justified, and certainly not in public places.

21. With the revised draft of the Code of Conduct ready for passing at the AGM, the Council has resolved to give it a 6-month transitional period for members to study and absorb the changes implemented, and to see new potentials in the adjustments made. None of the changes fundamentally affect who we are and what we do as barristers. They are more to bring our practice up to date to catch up with modern times.
22. On the disciplinary front, I should remind members to continue to exercise discretion in their use of social media. The code will not, and should not, be expected to spell out the precise types of conduct and the degree of severity of certain acts which might be considered objectionable. It is important that one exercises good judgment in considering whether their conduct will bring the Bar into disrepute.
23. That brings me to supplementary occupations. There is an increasing trend for barristers to write in to request for written permission to engage in supplementary occupations. While the Council appreciates the need and desirability for barristers to engage in other occupations up to a reasonable limit, it must be remembered that success at the Bar, particularly in the formative years of one's practice, often depend on the amount of time and effort one is prepared to commit into developing the skills needed to ground success.
24. I would strongly recommend junior members to make full use of all the learning and enrichment opportunities afforded by the Bar, such as subsidies to attend courses, trips or overseas conferences, so as to broaden one's perspective and better equip oneself for future challenges.

Practice Development – In Hong Kong and Beyond

25. The work under this heading relates to the work of the Council undertaken in order to pave way for the extension of the Bar's scope of practice in terms of source of work. This involves the Bar, while adhering to the existing Code of Conduct, aspiring to attain a heightened profile amongst groups of professionals or with business sectors overseas who have hitherto been unaware of the existence of another type of lawyers other than solicitors who they could engage

directly or indirectly for legal services. To put it more plainly, it involves the Bar as a professional body marketing its services to those who have always been in a position to instruct us directly for certain types of work, but did not previously know it was possible to do so.

26. Under Annex 14 of our Code of Conduct, it has always been possible for barristers to receive instructions directly from corporate counsel and foreign lawyers on non-contentious work to be carried out in Hong Kong and for international arbitrations. Corporate counsel are handling increasingly complicated matters, including matters requiring services in alternative dispute resolution. While many of them were qualified Hong Kong solicitors prior to going in-house, not many are experienced litigators used to working with counsel. In order to get corporate counsel to become more familiar with the Bar and members' capabilities, we began an initiative to conduct talks and social events between corporate counsel associations and the Bar Association.
27. We also created similar initiatives with the accountancy professionals, and the engineering professionals. Our efforts continued throughout 2016 to increase our level of engagement and our profile with members of other professional organizations who may need our direct services, as well as foreign lawyers practicing in Hong Kong.
28. On the China front, we have since November 2015 continued to expand our marketing efforts in bringing to the attention of Mainland lawyers of major cities ways to access our services, starting with Shanghai, followed by Shenzhen, Hangzhou, Guangdong and Nanjing. This led to agreements for direct appointment of legal consultants being signed with individual members "matched" to individual Mainland firms with the help of the China Practice Development Committee. These appointments enable the respective barristers to form a closer working relationship with the firm that has appointed them, in order to build synergy and mutual benefit in professional practice. Some have translated into actual professional services carried out directly between the barrister and the firm. Especially with firms involved in Sino-foreign legal services, a huge market potential awaits tapping. We are in the process of reviewing the workings of the earlier legal consultancy arrangement in order to improve the matching process and other aspects of its operation.

29. The Bar participated in a roadshow of Hong Kong legal services in Nanjing in October 2016 to great success. The roadshow showcased various speakers from the Bar as well as a mock arbitration staged with script written by the Bar with the participation of members from the Law Society. A record 26 members made up the delegation of the Bar. Successful business matching sessions took place in which young members honed their skills in entertaining enquiries direct from lawyers and clients in Nanjing on various matters to do with Hong Kong law. Important relationships were built with lawyers of the Jiangsu Province that are extremely promising. This led to the signing of an MOU and legal consultancy agreements as described in the preceding paragraph.
30. International practice development continued to be carried out last year in a limited scale through the participation in international conferences on my part as Chairman, and other members representing the Bar in arbitration, including Kim Rooney, Ian Pennicott SC, and Jose Maurellet SC. The Bar also maintained its presence in other international conferences such POLA, IBA, IPBA, UIA, LAWASIA and APAA and have begun to strategize in securing speaking opportunities in order to increase its influence and visibility internationally.
31. We believe continuous development on this front depends on a more up-to-date attitude and outlook in the light of globalization. The demands of modern-day practice will continue to demand barristers in Hong Kong to be more outward looking, and to be more prepared to consider oneself an international legal practitioner rather than one confined to the courts of Hong Kong. The attendance of international conferences is likely to have a transformative effect on the outlook of members, and is to be encouraged.

The Role of the Bar under One Country Two Systems

32. In the speech I delivered at the Opening of the Legal Year 2017 now published on the Bar website, I have explained what I regarded the role of the Hong Kong Bar is under one Country Two Systems. The Bar Council has supported that vision through the following means –
 - (a) Building on what has already been established, to continue to support and monitor the quality of the jointly taught course on common law with at the Peking University;
 - (b) In our official visit to Beijing, which took place in October this year, a delegation of 21 members conducted frank exchanges with officials of the Mainland Authorities, including the Basic Law Committee under the

NPCSC, the Ministry of Justice, the Supreme People's Court, and the Hong Kong Macau Office, and the State-owned Assets Supervision and Administration Commission of the State Council.

- (c) Apart from the above, no less than 39 occasions of exchanges or visits with or from mainland China legal professionals and legal authorities from various provinces of different levels.
- (d) Talks with the Judges Institute on a possible formal and permanent scheme in which barristers participate on the roster at their Beijing college to give lectures to courses given to judges from all over China.

The above initiatives are not focused upon the marketing of our services, but are generally for the purpose of facilitating better communication and understanding between the two systems. I would sincerely hope that these efforts will be maintained.

- 33. In my speech at the Opening of the Legal Year, I have also referred to the interpretation of the Basic Law by the NPCSC in November 2016. That came as a surprise to the Bar and appeared to have been a result of a change of attitude resulting from the developments of the oath-taking incident and the situation within the LegCo chamber. I say “surprise” because frank exchanges between Beijing officials and the delegation during our official visit to Beijing shortly before the incident left us with the distinct impression that the NPCSC was not geared up for an interpretation, though it was never expressly ruled out.
- 34. The Bar issued two statements in relation to the Interpretation, one before it was confirmed, and another on the same day when the Interpretation was announced. In between those two points of time, when the public was speculating on which article or what the contents of the interpretation would cover, I have called for calm and a reservation of opinion until the article to be interpreted and the contents are made clear before its impact could be properly assessed. At all times, I have made it clear that the timing of the interpretation, whatever its contents might be, was poorly judged, as it would inevitably give the impression that the interpretation was designed to dictate the result of the specific case in court.
- 35. Unfortunately, some members and public opinion leaders appear to have focused on my words quoted out of context, and decided that I deserved to be attacked for “supporting” the Interpretation, when I have never said so. The fact that I have not castigated the act of interpretation *per se* before the contents are known, and my indication that I could understand what triggered it, were wrongly

construed, out of context, as exonerating or even supporting the act of interpretation in the circumstances. That could not have been further from the truth.

36. The second statement issued by the Bar on 7 November 2016 should put that misunderstanding to rest. In two separate media interviews that went on air, where my words could no longer be quoted out of context in a truncated fashion by the digital print media, I explained in one go what my view was as Chairman, which was entirely consistent with what was said in the second statement and my previous interviews taken as a whole.
37. I am indebted to those members who at the most difficult of times retained their trust in me, particularly those who have enough faith to ascertain my true views without rising to join in others' personal attack against me. Technique in media interviews are built and experience accumulated over time. These serve as good lessons that I shall help pass on to my successor. That aside, regardless of personal attacks from different fronts, the Chair has no choice but to adhere to a sober and impartial view based on the facts and the law, not emotions, popular public opinion or political beliefs.
38. It remains for me to thank the two Vice Chairmen for their invaluable counsel and support, and their work done in the past year. They have given me the courage and incentive to push for reforms, and withstand pressure from fronts with diverging views, and the wisdom to tread steadily the path that we have to find for ourselves. I would also thank the whole Council for having been a tower of strength behind me, and for their selfless devotion of their time on the work of the Council. I am much indebted to the young members so many of whom have come forward to tell me in person of their appreciation of the Council's reformatory work. They are a constant source of strength and inspiration to me. Last but not least, my gratitude goes to a very devoted and efficient secretariat for their hard work.

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Chairman
Hong Kong Bar Association

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